IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2969 OF 2004

Gopal Krishnan Nair.....Petitioner

Versus

State of Maharashtra & Ors.Respondents

Mr. J.J.Shah, for the Petitioner
Ms.M. Kajale, A.G.P. for Respondent Nos. 1 and 2.

CORAM: F.I. REBELLO, J.
DATE : 5th November,2004

P.C.:

1. Petitioner is aggrieved by the order of the Additional Collector (Encroachment) Western Suburban District, Bandra dated 23rd March, 2004 whereby the Identity Card issued to the petitioner has been cancelled.

2. Few facts may be set out. Suit No.4637 of 1996 was filed by the petitioner against the present respondent and one Manish Majithia. In the said suit a declaration sought by the petitioner was that the plaintiff is lawful holder and in possession of pitch card No.85/P/N/SG 4 standing at Survey No.CTS Nos. 15, 16, 14A and 2/1 Shah Compound. For a further declaration that the defendant Nos. 1 and 2 are trespassers in that pitch card area and that they have no authority to work in and around pitch card property. It was further averred that the respondent No.3 was the original landlord of the suit property till the lease expired/terminated by the respondent Nos. 1 and 2. The defendant No.2 is the son of the Managing Director of the present Respondent No.3. The respondent No.3 resisted the claim and contended that they had a lease in their favour granted by the then Government of Bombay for a period of 999 years. He had constructed two chawls there. The petitioner was a monthly tenant . On notice being served on account of default of payment of rent

the petitioner filed an application for fixation of standard rent in the Small Causes Court bearing No.1523/SR/1975. That was decided on 2nd August, 2002. The present respondents 1 and 2 also filed written statement and they further asserted that the land had been leased out to the present respondent pursuant to lease deed dated 7th July, 1956 for 999 years and denied that the petitioner herein had any right. It is also pointed out that the petitioner had managed to get the identity card on false representation and that was reported to the Collector for cancellation. On framing issues the learned Court came to the conclusion that the petitioner was a tenant and considering that the suit for injunction as filed is not maintainable and dismissed the suit. It is submitted on behalf of the petitioner that the Appeal is pending. However, there is no interim relief obtained in that Appeal.

3. In the meantime the impugned order came to be passed. The respondent authority has also recorded a finding that the land is leased to the respondent NO.3 and the petitioner herein is a tenant of the company. Considering that and other material on record has cancelled the photo pass granted in favour of the petitioner.

4. At the hearing of the petition the learned Counsel contends that as the Appeal is pending against the order of the City Civil Court the Deputy Collector ought not to have made the order which has been passed. In my opinion there was no injunction restraining the Deputy Collector from proceeding. Even from the facts as they stood namely subsisting lease in favour of the Respondent NO.3 the contention of the petitioner that he was a tenant of

Respondent No.3 and the proceedings taken out by him in the Small Causes Court the order cannot be faulted.

5. The only contention now advanced is that the lease had been cancelled. The respondent Nos. 1 and 2 did not support that contention and have set out that the lease in favour of the Respondent No.3 is for 999 years. Once that be the case no interference called for. However, it is made clear that this order is subject to the order that has been passed by this Court in Appeal. If there be any order in favour of the petitioner herein it will be open to him to apply to the Deputy Collector (Encroachment) in which event the case of the petitioner will be considered irrespective of what is set out in the present order.

With the above observations, petition disposed of. No order as to costs.

(F.I.REBELLO, J.)